

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

SEARS HOLDINGS CORPORATION, *et al.*,

Debtors.¹

Chapter 11

Case No. 18-23538 (RDD)

(Jointly Administered)

**ORDER ON MOTION FOR AN ORDER ESTABLISHING
STREAMLINED PROCEDURES GOVERNING ADVERSARY PROCEEDINGS
WITH TOTAL IN CONTROVERSY LESS THAN OR EQUAL TO \$500,000
 BROUGHT BY THE DEBTORS PURSUANT TO SECTIONS 502,
547, 548 AND 550 OF THE BANKRUPTCY CODE**

Upon the *Fourth Motion for Orders Establishing Streamlined Procedures Governing Adversary Proceedings Brought by the Debtors Pursuant to Sections 502, 547, 548 and 550 of the Bankruptcy Code*, dated April 9, 2020 (the “**Motion**”), by notice of presentment dated April 9, 2020,² filed by Sears Holdings Corporation and its debtor affiliates, as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the “**Debtors**” or “**Plaintiff**”) by and through their undersigned counsel, for entry of, among other things, a procedures order (the

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are as follows: Sears Holdings Corporation (0798); Kmart Holding Corporation (3116); Kmart Operations LLC (6546); Sears Operations LLC (4331); Sears, Roebuck and Co. (0680); ServiceLive Inc. (6774); SHC Licensed Business LLC (3718); A&E Factory Service, LLC (6695); A&E Home Delivery, LLC (0205); A&E Lawn & Garden, LLC (5028); A&E Signature Service, LLC (0204); FBA Holdings Inc. (6537); Innovel Solutions, Inc. (7180); Kmart Corporation (9500); MaxServ, Inc. (7626); Private Brands, Ltd. (4022); Sears Development Co. (6028); Sears Holdings Management Corporation (2148); Sears Home & Business Franchises, Inc. (6742); Sears Home Improvement Products, Inc. (8591); Sears Insurance Services, L.L.C. (7182); Sears Procurement Services, Inc. (2859); Sears Protection Company (1250); Sears Protection Company (PR) Inc. (4861); Sears Roebuck Acceptance Corp. (0535); Sears, Roebuck de Puerto Rico, Inc. (3626); SYW Relay LLC (1870); Wally Labs LLC (None); SHC Promotions LLC (9626); Big Beaver of Florida Development, LLC (None); California Builder Appliances, Inc. (6327); Florida Builder Appliances, Inc. (9133); KBL Holding Inc. (1295); KLC, Inc. (0839); Kmart of Michigan, Inc. (1696); Kmart of Washington LLC (8898); Kmart Stores of Illinois LLC (8897); Kmart Stores of Texas LLC (8915); MyGofer LLC (5531); Sears Brands Business Unit Corporation (4658); Sears Holdings Publishing Company, LLC. (5554); Sears Protection Company (Florida), L.L.C. (4239); SHC Desert Springs, LLC (None); SOE, Inc. (9616); StarWest, LLC (5379); STI Merchandising, Inc. (0188); Troy Coolidge No. 13, LLC (None); BlueLight.com, Inc. (7034); Sears Brands, L.L.C. (4664); Sears Buying Services, Inc. (6533); Kmart.com LLC (9022); Sears Brands Management Corporation (5365); and SRe Holding Corporation (4816). The location of the Debtors’ corporate headquarters is 3333 Beverly Road, Hoffman Estates, Illinois 60179.

² Capitalized terms not otherwise defined herein shall have the same meaning ascribed to them as in the Motion.

“**Procedures Order**”) establishing streamlined procedures governing the adversary proceedings with a total transfers less than or equal to \$500,000 brought by the Debtors pursuant to Sections 502, 547, 548, and 550 of the Bankruptcy Code identified in **Exhibit 1** annexed hereto (each an “**Avoidance Action**,” collectively, the “**Avoidance Actions**”); and the Court having jurisdiction to consider and determine the Motion as a core proceeding in accordance with 28 U.S.C. §§ 157(a)-(b) and 1334(b) and the Amended Standing Order of Reference M-431, dated January 31, 2012 (Preska, C.J.); and venue being proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion and the opportunity for a hearing thereon having been provided in accordance with the Amended Order Implementing Certain Notice and Case Management Procedures, dated November 1, 2018 (D.I. No. 405), including, as represented by counsel for the Debtors, the parties to the Avoidance Actions; and it appearing that no other or further notice need be provided; and the only objection(s) to the Motion having been withdrawn, overruled, or otherwise resolved; and the Court having determined that no hearing on the Motion is required; and, after due deliberation, the Court having determined that the legal and factual bases set forth in the Motion establish good and sufficient cause for the relief granted herein and that such relief is in the best interests of the Debtors, their estates, their creditors and all parties in interest in that it will facilitate the prompt, economical and fair determination and resolution of the Avoidance Actions; now, therefore,

IT IS HEREBY ORDERED THAT:

1. The Motion granted as provided herein.
2. All parties to the Avoidance Actions shall be governed by the procedures attached hereto as **Exhibit 2** (the “**Avoidance Action Procedures**”) and incorporated herein by reference, which Avoidance Action Procedures are hereby approved and shall govern the

Avoidance Actions, effective as of the date of this Order.

3. The time periods set forth in this Order and the Avoidance Action Procedures shall be calculated in accordance with Bankruptcy Rule 9006(a).
4. The Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.
5. This Order shall be effective immediately upon its entry.

Dated: May 4, 2020
White Plains, New York

/s/Robert D. Drain

THE HONORABLE ROBERT D. DRAIN
UNITED STATES BANKRUPTCY JUDGE

Exhibit 1

CASE LIST

Defendant Name	Adversary Number
Aramark Management Services Limited Partnership	20-06010
Aramark Services, Inc.	20-06011
AT&T Mobility LLC	20-06013
Clorox Manufacturing Company of Puerto Rico, Inc. fdba The Clorox Company of Puerto Rico	20-06015
Coca-Cola Beverages Florida, LLC	20-06016
Creative Artists Agency, LLC	20-06020
CSC Covansys Corporation	20-06021
Cushman & Wakefield, Inc.	20-06022
Experian PLC dba Experian Consumer Direct	20-06023
Ferrara Candy Company	20-06024
Fidelity Information Services, LLC	20-06025
Great Lakes Coca-Cola Distribution, L.L.C.	20-06026
HFC Prestige International Puerto Rico LLC	20-06028
Johnson Controls Security Solutions LLC fdba Tyco Integrated Security	20-06031
JS Products, Inc.	20-06032
Pepsi Bottling Ventures LLC	20-06036
Pepsico Puerto Rico, Inc. fdba Pepsi Cola Bottling Company Puerto Rico	20-06037
Pepsico Caribbean, Inc.	20-06038
Pepsi-Cola Bottling Company of New York, Inc.	20-06039
SBC Global Services, Inc. dba AT & T Global Services	20-06041
Swimways Corp.	20-06043
The Coca-Cola Company dba Coca-Cola Puerto Rico Bottlers	20-06045
The Kraft Heinz Company fdba Kraft General Foods Inc.	20-06047
The Nature's Bounty Co. fdba NBTY, Inc.	20-06048
The Ohio Bell Telephone Company dba AT & T Ohio	20-06049
The Quaker Oats Company	20-06050
Walgreen Co.	20-06052
Workiva Inc.	20-06054
Achim Importing Company Inc.	20-06056
American Exchange Time LLC	20-06057
Baby Trend, Inc.	20-06058

CAP Barbell, Inc.	20-06060
Carrier Corporation	20-06061
Ecolab Inc.	20-06063
eScreen, Inc.	20-06064
Gannett Co., Inc. dba USA Today Network	20-06066
General Marketing Solutions, LLC	20-06067
Hireright, LLC	20-06068
Imagination Publishing L.L.C.	20-06071
Kobi Katz, Inc. dba Baguette World	20-06072
Koolatron, Inc.	20-06073
ManpowerGroup Inc. fdba Manpower Inc.	20-06074
Mode Distributing, LLC	20-06075
Ontel Products Corporation	20-06076
Optimum Fulfillment LLC	20-06077
Pilot Automotive, Inc.	20-06078
Positec USA, Inc.	20-06079
Pulsar Products, Inc.	20-06081
Snelling Employment, LLC	20-06083
The Coleman Company, Inc.	20-06085
Timex Group USA, Inc fdba Timex Corporation	20-06086
Trademark Global, LLC fdba Trademark Games, LLC	20-06088
Tri-Coastal Design Services, LLC	20-06089
True Value Company dba General Paint & Manufacturing	20-06090
U.S. Metro Group, Inc.	20-06091
Zephyr Corporation	20-06094
Prizer-Painter Stove Works, Inc.	20-06096
About Time Snow Removal	20-06099
Adaptly, Inc.	20-06100
Adsemble Inc.	20-06101
Advanced Technology Services Inc.	20-06102
Alcon Laboratories Inc.	20-06103
Alta-Dena Certified Dairy, LLC	20-06104
Appliance Parts Depot LLC	20-06105
Arizona Beverages USA LLC	20-06107
Arundel Crossing II LLC	20-06108
Associated Hygienic Products	20-06109
Atos It Solutions and Services, Inc.	20-06110
Becker Logistics, Inc.	20-06112
Bell Sports Inc.	20-06113

Berkshire Fashions Inc.	20-06114
Blackstone Industries LLC	20-06115
Blanco Velez Stores Inc.	20-06116
Bolymax International Corporation	20-06118
Buddy's Newco, LLC	20-06119
California Innovations (U.S.) Inc.	20-06121
California Newspaper Partnership	20-06122
Centrex Plastics LLC	20-06123
Cheng Yen Enterprises Co. Ltd.	20-06124
Coefficient Mechanical Systems	20-06125
Cole Road Distribution Center	20-06126
Coqui Net	20-06127
CPP International, LLC	20-06128
Creative Circle LLC	20-06129
Cristalia Acquisition Corp.	20-06130
CS Packaging Inc.	20-06131
Davco Mechanical Services LLC	20-06132
Dynamic Ventures Inc.	20-06133
Eagle Mere Services LLC	20-06134
Electroline Wholesale Electronics	20-06135
Esi Cases & Accessories Inc.	20-06136
Ethan Conrad	20-06137
Fabrica De Jabon La Corona	20-06138
Fantasia Accessories, Ltd.	20-06139
Fibrix, LLC	20-06140
Forward Air Solutions Inc.	20-06141
Fridge and Appliance Corp DBA Refrigeration and Appliances Corp.	20-06143
Friedmans Appliance Center	20-06144
Full Power Electrical Corp.	20-06145
Generis Tek Inc.	20-06147
Genpro International Inc.	20-06148
Global Logistics Inc.	20-06149
Global Product Resources Inc.	20-06150
Gold Coast Beverage, LLC	20-06151
Graphic Team Inc.	20-06152
Great American Merchandise DBA Great American Merchandise & Events, LLC	20-06153
Guam Publication Pacific Daily News	20-06155
Harris Paints	20-06156
Henry C Wood	20-06157

Hunt & Sons, Inc.	20-06158
Iberia Foods Corp.	20-06159
Icee USA	20-06160
ICON Eyewear Inc.	20-06161
Integrity Home Service Corp.	20-06163
International Airport Center Inc.	20-06164
Island Wines & Spirits	20-06166
Journal Registrar Newspaper	20-06167
Jump Design Group Inc.	20-06168
Kid Galaxy Inc.	20-06169
Krause Watch Company	20-06170
L & J Accessories	20-06171
L 3 Sales And Sourcing Inc.	20-06172
Lopex Express, LLC	20-06175
Luen Fung Enterprises	20-06176
Made4U Studio, LLC	20-06177
Maxmark Inc.	20-06179
Medtech Products Inc.	20-06180
Mid Continent Btlg. Co. Inc.	20-06181
Midwest Can Company	20-06182
Midwest Snow Technicians Inc.	20-06183
Msg Services Corporation	20-06184
National Health Info Network	20-06185
Nelson Staffing Solutions	20-06186
Newacme LLC DBA Exacme	20-06187
O'Brien & Gere Engineers Inc.	20-06188
Olympia Tools International, Inc.	20-06189
OND JV LLC DBA OND Property LLC	20-06190
Onespace Inc.	20-06191
P & A Development Associates	20-06192
Paradies Gifts, Inc.	20-06193
Phoenix Energy Technologies Inc.	20-06194
Physicians Formula Inc.	20-06195
Platte Valley Investments LLC	20-06196
Power Technology Inc.	20-06197
Prestige Maintenance USA Ltd.	20-06198
Pro Installs Appliance Installations	20-06199
Profoot Inc.	20-06200
Fortune Creation Company Limited	20-06201

Ryad Consulting, Inc.	20-06203
Safavieh Intl. LLC	20-06204
Schawk Inc.	20-06205
Select Beverages Inc.	20-06206
Select Salons Inc.	20-06207
Shakespeare Company, LLC	20-06208
Shoezoo.com, LLC	20-06210
Singer Sewing	20-06211
Specialized Transportation Inc.	20-06212
Summit Construction LLC	20-06214
Sunshine Mills, Inc.	20-06217
SW Corporation	20-06218
Swire Coca Cola USA	20-06219
Tavano Team	20-06220
Tdbbs LLC	20-06221
Tforce	20-06222
The Mibro Group	20-06223
TNG GP SBT DSD	20-06225
Trixxi Clothing Company Inc.	20-06226
Unified Marine	20-06229
Variety International Enterprises	20-06231
Varouj Appliances Services Inc.	20-06232
Young's Holdings, Inc.	20-06234
Zuru LLC	20-06235
Glamour Prestige Corp.	20-06236

* 173 Adversary Proceedings

Exhibit 2

AVOIDANCE ACTION PROCEDURES

A. Effectiveness of the Procedures Order

1. This Procedures Order approving the procedures Motion shall apply to all Defendants in the Avoidance Actions listed on **Exhibit 1** attached hereto. To the extent a Party is a Defendant in an Avoidance Action subject to this Procedures Order governing cases less than or equal to \$500,000, and is also a defendant in a separate adversary proceeding governed by the procedures order covering those cases with an amount in controversy greater than \$500,000, the Parties shall meet and confer to decide whether the actions should proceed under one procedures order or the other. If an agreement cannot be made, the parties may apply to the Court for resolution.
2. The Procedures Order will not alter, affect or modify the rights of Defendants to seek a jury trial in or withdrawal of the reference of, Avoidance Actions or otherwise to move for a determination on whether the Court has authority to enter a final judgment, or issue proposed findings of fact and conclusions of law, in an Avoidance Action under 28 U.S.C. § 157, and all such rights shall be preserved unless otherwise agreed to in a responsive pleading consistent with the Bankruptcy Rules and Local Bankruptcy Rules.

B. Extensions to Answer or File Other Responsive Pleading to the Complaint

3. The time to file an answer or other responsive pleading to a complaint filed in an Avoidance Action shall be extended by 60 days such that an answer or other responsive pleading is due within 90 days after the issuance of the summons.

C. Waiver of Requirement to Conduct Pretrial Conference

4. Federal Rule of Civil Procedure 16, made applicable to the Avoidance Actions pursuant to Bankruptcy Rule 7016 (*i.e.*, pretrial conferences), is hereby waived and not applicable with respect to the Avoidance Actions. Neither the Plaintiff nor any Defendant shall be required to appear at any initial pretrial conference, including any initial pretrial conference originally scheduled pursuant to Local Rule 7016-2.

D. Waiver of Requirement to Conduct Scheduling Conference

5. Federal Rule of Civil Procedure 26(f), made applicable to the Avoidance Actions pursuant to Bankruptcy Rule 7026 (mandatory meeting before scheduling conference/discovery plan), is hereby waived and is not applicable to the Avoidance Actions. Thus, the parties to the Avoidance Actions shall not be required to submit a written report as may otherwise be required under Federal Rule of Civil Procedure 26(f).

E. Discovery, Mediation, and Dispositive Motion Schedule

6. All discovery in each Avoidance Action is hereby stayed until the mediation process set forth below (the “**Mediation Process**”) is concluded; provided that the stay of formal discovery shall in no way preclude, with respect to any Avoidance Action, the Plaintiff and applicable Defendant from informally exchanging documents and information in an attempt to resolve such Avoidance Action in advance of, or during, the Mediation Process.
7. Any open Avoidance Actions that have not been resolved and/or settled by August 31, 2020 (the “**Remaining Avoidance Actions**”), shall be referred to mandatory mediation and the Mediation Process in paragraphs 8-13.
8. Between September 1, 2020 and September 15, 2020, Defendants in the Remaining Avoidance Actions shall choose a mediator from the list of proposed mediators (each a “**Mediator**,” collectively, the “**Mediators**”) (the “**Mediator List**”) attached hereto as Exhibit 3. Concurrently, Defendants in the Remaining Avoidance Actions shall notify Plaintiff’s counsel of the Defendant’s choice of Mediator by contacting: (i) if Plaintiff is represented by ASK LLP, Laurie N. Miskowiec, in writing, via email at lmiskowiec@askllp.com or via letter correspondence addressed to ASK LLP, 2600 Eagan Woods Drive, Suite 400, St. Paul, MN 55121, or (ii) if Plaintiff is represented by Katten Muchin Rosenman LLP (“**Katten**”), Anthony Wong, in writing, via email at anthony.wong@katten.com or via letter correspondence addressed to Katten Muchin Rosenman LLP, 575 Madison Avenue, New York, NY 10022. If a Defendant in a Remaining Avoidance Action does not timely choose a Mediator from the Mediator List and notify Plaintiff’s counsel of the same, Plaintiff will assign such Remaining Avoidance Action to one of the Mediators from the Mediator List.
9. Upon notification of such selection or assignment, the selected Mediator shall have an opportunity to determine whether he/she has any conflicts with the Defendant(s) and, in the event of a conflict, may abstain from acting in the particular mediation. If the selected Mediator abstains, Defendant will be given another 15 days to select an alternate Mediator as described in paragraph 8 above.
10. Upon the selection of Mediators, Plaintiff, working with the Mediators, will commence scheduling mediations. Each Mediator will provide to Plaintiff the dates on which the Mediator is available for mediation and the parties shall cooperate with the Mediators and each other regarding the scheduling of mediations. Plaintiff’s counsel shall contact Defendant or Defendant’s counsel with a list of proposed dates for mediation provided by the Mediator. Mediation will then be scheduled on a first-come, first-served basis.
11. Plaintiff will give at least 21 days’ written notice of the first date, time and place of the mediation in each Remaining Avoidance Action (the “**Mediation Notice**”), which notice shall be served on the applicable Defendant.

12. Within 7 calendar days after the conclusion of the mediation, the Mediator shall file a report (the “**Mediator’s Report**”) pursuant to General Order M-452 in the Remaining Avoidance Action, which shall be limited to stating only a) compliance or non-compliance with the General Order and b) whether the Remaining Avoidance Action settled or did not settle.
13. The Mediation Process with respect to all of the Remaining Avoidance Actions must be concluded by January 29, 2021.
14. Any open Avoidance Actions shall be required to provide the disclosures required under Rule 7026(a)(1) (the “**Initial Disclosures**”) on or before February 26, 2021.
15. All written interrogatories, document requests and requests for admission, if any, may be served upon the adverse party any time after the Mediator’s Report is filed. All written interrogatories, document requests and requests for admission, if any, must be served no later than March 31, 2021.
16. The parties to the Avoidance Actions shall have through and including June 15, 2021 to complete non-expert fact discovery, including depositions of fact witnesses.
17. Unless the parties agree to a broader scope of discovery, absent further order of the Court upon a showing of good cause, discovery will be limited solely and specifically to nonprivileged matters (i) that are properly discoverable under the Bankruptcy Rules and (ii) relate solely to the Avoidance Actions.
18. Federal Rule of Civil Procedure 33, made applicable herein pursuant to Bankruptcy Rule 7033, shall apply to the Avoidance Actions.
19. Federal Rule of Civil Procedure 34, made applicable herein pursuant to Bankruptcy Rule 7034, shall apply to the Avoidance Actions.
20. Federal Rule of Civil Procedure 36, made applicable herein pursuant to Bankruptcy Rule 7036, shall apply to the Avoidance Actions.
21. Should a discovery dispute arise, the parties’ counsel shall promptly confer to attempt in good faith to resolve the dispute. If, notwithstanding their good faith efforts to do so, they are unable to resolve a discovery dispute, the complainant shall file with the Court and email to the Court’s chambers, copying counsel for the opponent, a letter outlining said issues. Respondent must reply within two (2) business days by filing a letter on the docket with a copy emailed to the Court’s chambers, copying counsel for the opponent. Such letter, excluding exhibits, shall be no longer than two (2) pages. The Court shall then inform the parties if it will require a conference call or formal motion. At any ensuing conference or hearing on a motion, the Court will ask the parties about their prior efforts to resolve the dispute.

22. Pursuant to Federal Rule of Civil Procedure 26(a)(2), made applicable herein pursuant to Bankruptcy Rule 7026, disclosures and reports (a) concerning any issue on which a party bears the burden of proof (not including any report by Plaintiff on insolvency) and (b) if Defendant intends to provide expert testimony regarding insolvency of the Debtors, such report, if any, shall be made to the Plaintiff on or before July 30, 2021.
23. Federal Rule of Civil Procedure 26(a)(2), made applicable herein pursuant to Bankruptcy Rule 7026, disclosures and reports (a) of the parties' rebuttal experts, and (b) Plaintiff's report on the insolvency of the Debtors, if any, shall be made to the adverse party on or before September 21, 2021.
24. All expert discovery, including expert witness depositions, shall be concluded on or before October 29, 2021.
25. The standard provisions of Federal Rule of Civil Procedure 26(e), made applicable herein pursuant to Bankruptcy Rule 7026, shall apply to the Avoidance Actions with respect to supplementation of discovery responses.
26. Either or both parties may seek leave under Local Bankruptcy Rule 7056 by email to the Court, with a copy to the counsel for the opposing party; provided, that all dispositive motions shall be filed and served at any time after the Mediation Process but before November 30, 2021. In the normal course, the Court will not permit the filing and pursuit of a summary judgment motion before the completion of discovery. Notwithstanding Local Bankruptcy Rule 7005-1, the party filing or opposing such dispositive motion shall be allowed to introduce such exhibits as needed to meet its burden of proof or rebut such burden.

F. Mediation Procedures and Requirements

27. Mediations shall take place in New York, New York, except as otherwise agreed to by the parties and the Mediator. Mediations shall be held at the law office of the Debtors' counsel, the Mediator's office, or at another location agreed upon by the Mediator; **provided, that, notwithstanding any other provision hereof, at the direction of the Mediator, any or all of the Mediation may be conducted telephonically.** Local Bankruptcy Rule 9019-1 and the Court's General Order M-452 concerning mediation procedures shall govern the mediations, except as otherwise set forth herein. General Order M-452 is available on the Court's website at: <http://www.nysb.uscourts.gov/>.
28. All proceedings and writing incident to the mediation will be considered privileged and confidential and subject to all the protections of Federal Rule of Evidence 408, and shall not be reported or admitted in evidence for any reason except to prove that a party failed to comply with the Mediation Process set forth in these Procedures.
29. The Mediators shall be required to file disclosures prior to the scheduling of mediation.

30. The parties in each Remaining Avoidance Action will participate in the mediation, as scheduled and presided over by the chosen Mediator, in good faith and with a view toward reaching a consensual resolution. The mediation shall be attended in person by a representative of the Defendant with full settlement authority (and if a Defendant is represented by counsel, their counsel) as well as counsel for the Debtor (who must have settlement authority from the Debtors, or a Debtor representative shall appear as well), except that: (1) a Mediator, in his or her discretion, may allow a party representative to appear telephonically or, (2) the parties may consent to a party representative appearing telephonically. **Any such request must be made prior to ten (10) business days before the scheduled mediation date, or Defendant is deemed to waive such request.** Should a party representative appear by telephone, counsel appearing in person for that party shall have full settlement authority. To the extent a Mediator grants a party's request to appear telephonically, the requesting party is responsible for arranging for and paying any fees associated with teleconference services. Should a dispute arise regarding a Mediator's decision on whether to allow a party representative to appear telephonically rather than in person, a party may apply by email to the Court, in advance of the mediation, by sending a letter outlining said issues to chambers. The Court may then schedule a conference call to address the issues.
31. The Mediator will preside over the mediation with full authority to determine the nature and order of the parties' presentations, and the rules of evidence will not apply. Each Mediator may implement additional procedures which are reasonable and practical under the circumstances.
32. The Mediator, in the Mediation Notice (by language provided to Plaintiff by the Mediator) or in a separate notice that need not be filed, may require the parties to provide to the Mediator any relevant papers and exhibits, a statement of position, and a settlement proposal. In the Mediator's discretion, upon notice (which need not be filed), the Mediator may adjourn a mediation or move a mediation to a different location within the same jurisdiction. The Mediator may also continue a mediation that has been commenced if the Mediator determines that a continuation is in the best interest of the parties.
33. The parties must participate in the scheduling of mediation and mediate in good faith. If the mediator feels that a party to the mediation is not attempting to schedule or resolve the mediation in good faith, the mediator may file a report with the Court. The Court may, without need for further motion by any party, schedule a hearing. If the Court determines that the party is not cooperating in good faith with the mediation procedures, the Court may consider the imposition of sanctions. Additionally, if either party to the mediation is not attempting to schedule or resolve the mediation in good faith, the opposite party may file a motion for sanctions with the Court. Litigation with respect to the issuance of sanctions shall not delay the commencement of the mediation. Sanctions may include, but are not limited to, attorney's fees and costs and fees of the Mediator.

34. Upon notice and a hearing, a party's failure to appear at the mediation or otherwise comply with the Procedures Order with respect to mediation, may result in a default judgment or dismissal being obtained against the party failing to comply with the mediation provisions. The Mediator shall promptly file with the Court a notice when any party fails to comply with the mediation provisions set forth in the Procedures Order.
35. The fees and costs of the Mediator (the "**Mediation Fee**") shall be paid equally by the parties on a fixed-fee schedule as set forth below. The parties shall pay one-fourth of the Mediation Fee at least seven (7) calendar days prior to the commencement of mediation (the "**Initial Mediation Fee**"). The remaining fee will be due and paid by the parties on the date of mediation, should the mediation go forward. If the parties settle prior to the mediation, the Mediator must be informed of the settlement prior to seven calendar days before the scheduled mediation or the Initial Mediation Fee is nonrefundable:
 - i. cases with a claim amount (as reflected in the complaint) of less than \$100,000: \$3,000.00 per case;
 - ii. cases with a claim amount (as reflected in the complaint) equal to or greater than \$100,000 and less than \$250,000: \$4,000 per case; and
 - iii. cases with a claim amount (as reflected in the complaint) equal to or greater than \$250,000 and less than \$1,000,000: \$5,000 per case.
 - iv. cases with a claim amount (as reflected in the complaint) equal to or greater than \$1,000,000 and less than \$5,000,000: \$6,000.00 per case;
 - v. cases with a claim amount (as reflected in the complaint) equal to or greater than \$5,000,000: \$7,000 per case.
36. Mediation that is continued for more than one calendar day will be continued on an hourly fee basis to be paid equally by the parties.
37. Defendants that have additional Avoidance Actions commenced against their affiliates in the Debtors' bankruptcy cases may mediate all related Avoidance Actions at one time and, in such event, the Mediation Fee shall be based upon the combined total claim amount for all related Avoidance Actions.
38. Mediation statements shall be delivered to the Mediator 7 calendar days prior to the mediation. Unless otherwise directed by the Mediator, the mediation statements shall be shared with the opposing party, except that any party that has confidential information may share such confidential information solely with the Mediator. The Mediator will direct the parties as to further instructions regarding the mediation statements.
39. Without the prior consent of both parties, no Mediator shall mediate a case in which he/she or his/her law firm represents a party. If a Mediator's law firm represents any Defendant in the Avoidance Actions, then: (a) the Mediator shall not personally

participate in the representation of that Defendant; (b) the law firm shall notate the file to indicate that the Mediator shall have no access to it; and (c) any discussions concerning the particular Avoidance Action by employees of the law firm shall exclude the Mediator. The Mediator's participation in mediation pursuant to the Procedures Order shall not create a conflict of interest with respect to the representation of such Defendants by the Mediator's law firm.

40. No Mediator shall be called as a witness by any party except as set forth in this paragraph. No party shall attempt to compel the testimony of, or compel the production of documents from, the Mediators or the agents, partners or employees of their respective law firms. Neither the Mediators nor their respective agents, partners, law firms or employees (a) are necessary parties in any proceeding relating to the mediation or the subject matter of the mediation, nor (b) shall be liable to any party for any act or omission in connection with any mediation conducted under the Procedures Order. Any documents provided to the Mediator by the parties shall be destroyed 30 days after the filing of the Mediator's Report unless the Mediator is otherwise ordered by the Court. However, subject to court order, a Mediator may be called as witness by any party and may be compelled to testify on a limited basis in proceedings where it is alleged that a party failed to comply with mediation procedures as required in the foregoing paragraphs of this Procedures Order.
41. All proceedings and writings incidental to the mediation shall be privileged and confidential, and shall not be reported or placed in evidence.

G. Miscellaneous

42. If, after dispositive motions have been filed in an Avoidance Action and a decision on the same does not resolve the matter, that Avoidance Action shall be scheduled for a trial date that is convenient to the Court's calendar. Parties should be ready to proceed to trial within three weeks after such decision is rendered. Before seeking such trial date, the parties shall have met and conferred and agreed on their best estimate of the length of the trial, taking into account the procedures set forth below. When seeking such date, they shall inform the Court's Courtroom Deputy of such estimate. Normally, the Court expects that Avoidance Action trials will not take longer than one day. If the parties believe otherwise, they should arrange a pre-trial conference before scheduling the trial.
43. On or before two weeks before the trial, the parties shall have (a) met and conferred and used their best efforts to agree on a joint agreed admissible exhibit book and shall have identified any exhibits whose admissibility is not agreed and (b) exchanged proposed witness lists.
44. On or before one week before the scheduled trial date, the parties shall (a) submit to chambers (in hard copy) declarations under penalty of perjury or affidavits of their direct witnesses, who shall be present at trial for cross-examination and redirect, or have previously sought (by email to the Court's chambers, with a copy

- to counsel for the opposing party) the Court's permission to examine direct witnesses at trial and (b) submit the joint exhibit book referred to in paragraph 43.
45. The Local Bankruptcy Rules shall apply, except that this Procedures Order shall control with respect to the Avoidance Actions to the extent of any conflict with the Local Rules or other applicable rules and orders of the Court.
 46. The deadlines and/or provisions contained in this Procedures Order may be extended and/or modified by the Court upon written motion and for good cause shown or consent of the parties pursuant to stipulation, which stipulation (a) if solely related to an extension of time for Defendant to file a response to the complaint, must be filed with the Court, and (b) in all other deadline extensions, must be filed with the Court, with a copy emailed to the Court's chambers and "So Ordered."
 47. **FAILURE TO COMPLY WITH THESE PROCEDURES MAY RESULT IN DISMISSAL OR OTHER SANCTION.** If delay or other act or omission of your adversary may result in a sanction against you, it is incumbent on you to promptly bring this matter to the Court for relief.

Exhibit 3

MEDIATOR LIST

1. David Banker
Montgomery McCracken Walker & Rhoads LLP
2. Christopher Battaglia
Halperin Battaglia Benzija, LLP
3. Mark Felger
Cozen O'Connor P.C.
4. Eric Haber
Law Office of Eric Haber, PLLC
5. Jorian Rose
BakerHostetler
6. Sean Southard
Klestadt Winters Jureller Southard & Stevens, LLP